In the High Court of Punjab and Haryana at Chandigarh

CWP NO. 18622 OF 2004.

Date of Decision:14.9.2006.

Jagjit Singh Katara
vs.
S.G.P.C. and another.
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CORAM:- HON'BLE MR.JUSTICE J.S.NARANG.
HON'BLE MR.JUSTICE ARVIND KUMAR.

PRESENT:- Mrs.Vanita Sapra Kataria,Advocate for the petitioner.
Mr.P.S.Thiara,Advocate for the respondent.

J.S.Narang,J.

The petitioner-workman had claimed reference of industrial dispute before the appropriate government, after serving demand notice and the reconciliation proceedings having failed. The appropriate government referred the industrial dispute vide order dated October 26,1998. The workman submitted the claim statement, the respondent filed a detailed written statement, taking all the pleas and contesting the claim of the petitioner workman. The legal objection has been taken that the reference is not maintainable as the respondent i.e. Shiromani Gurudwara Prabandhank Committee (SGPC) is not an industry under the provisions of the Industrial Disputes Act,1947, (hereinafter referred to as "the Act") therefore, the Labour Court has no jurisdiction to adjudicate and take a decision upon the reference. However, upon the pleadings of the parties issues have been

framed and that the first issue reads as under:-

> "Whether the reference is not maintainable as alleged in the legal objections taken in written statement?"

Parties led their respective evidence to prove their pleadings.

The Labour Court has categorically held, so far as issue no.2 is concerned that the respondents have properly held the enquiry and that appropriate opportunity to defend had also been granted by the Enquiry Committee after the workman had been duly served with the charge sheet and he had submitted reply thereto. It has been noticed that the workman had earlier also embezzled the amount, in regard to which the admission was made by him and thereafter a fine of Rs.100/- had been imposed upon him, as per the decision of the Enquiry Committee. However, the workman was reinstated. Then again the workman embezzled the amount and yet again admitted his guilt and was punished with a fine of Rs.500/-. Thereafter, his services had been terminated vide order dated March 5,1993. It has been held by the Labour Court that the workman is in the habit of embezzling amount, therefore, the opinion formed by the respondent does not require to be interfered with.

Apart from above, so far as maintainability of the reference is concerned, the Labour Court has categorically opined that the Shiromani Gurudwara Prabandhank Committee is not an industry and in this regard, has placed reliance upon a judgment rendered by a learned single Judge of this Court in re: *Shiromani Gurudwara Prabandhank Committee v. Presiding Officer, Labour Court, Patiala*, 2003 (4) SCT 77, wherein it has been held that SGPC is not a commercial organization and not in the business of distribution of goods and services, which may satisfy human

wants, therefore, it does not fall within the ambit of industry as defined under the Act.

Learned counsel for the petitioner has argued that the Labour Court has fallen into error by holding that SGPC is not an industry. The fact of the matter is that SGPC is an institution created under the Statute for achieving the objects contained in the Act, known as, Sikh Gurudwaras Act. Setting up of religious institutions may not fall within the ambit of commercial organizations but setting up of educational institutions would definitely fall within the ambit of commercial organizations and that the profit earned therefrom would certainly fall within the ambit of business. As such, the SGPC would fall within the ambit of definition under Section 2 (j) of the Act. Thus, the Labour Court has come to erroneous conclusion accordingly. So far as embezzlement is concerned, the Labour Court did not keep in view that the workman had been punished with a fine of Rs.500/- for the offence alleged to have been committed by him. There was no reason to pass an order of termination. The workman has been subjected to the rigor of double jeopardy, therefore, the order of termination is not sustainable.

On the other hand, learned counsel for the respondent contends that the Labour Court has correctly held that the SGPC does not fall within the ambit of definition of "industry" as defined under the Act. SGPC is not a commercial organization nor is carrying on any kind of business for earning profit. It is a religious institution. It is not a profit making body but is only required to supervise and control the notified Sikh Gurudwaras under the Sikh Gurudwaras Act. Reliance has been placed upon a judgment of this Court rendered in re: *Shiromani Gurudwara Prabandhank*

Committee v. Presiding Officer, Labour Court,Patiala 2003(3) RSJ 499.

We have heard learned counsel for the parties at length and have also perused the paper book and the award dated December 4,2003, made by the Labour Court. We are of the opinion that the Labour Court has correctly opined that SGPC is not an industry within the definition of industry provided under the Act i.e. Section 2(j), which reads as under:-

> "Industry means any business, trade undertaking, manufacturer or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"

The element of business, trade, undertaking or manufacture is the essential ingredient for terming the organization as an "industry" which are absent vis-a-vis SGPC. Further, there is no element of calling of employers which may include any calling, service, employment, handicraft or industrial occupation or avocation of workmen. The objects contained in the Sikh Gurudwara Act are explicit to the effect as to what are the functions to be performed by the SGPC and that none of the actions or functions fall within the ambit of any of the aforesaid, which could entail SGPC into the mischief of industry, as defined under the Act.

The Sikh Gurudwaras Act,1925 was enacted with the object of providing a legal procedure by which such gurudwaras and shrines as are, owing to their origin and habitual use, regarded by the Sikhs as essentially places of Sikh worship, may be brought effectively and permanently under Sikh control and their administrative reforms so as to make it consistent with the religious values of that community. The SGPC had come into existence in 1921 and was later registered under the Societies Registeration

Act in the same year. The Gurudwaras were voluntarily placed under the control of the SGPC for the managerial affairs accordingly. History in regard to the above has been recapitulated by the Hon'ble Supreme Court while rendering judgment in re: *A.K.Gopalan vs. State of Madras*, AIR 1950 SC 27, whereby the circumstances under which the relevant Act had been passed had been discussed and duly noticed.

(The aforestated has been noticed from the book authored by Mr. Navkiran Singh, Advocate, Punjab and Haryana High Court, Chandigarh.)

In each case, it is required to be examined as to which are the attributes, the presence of which would make an activity an undertaking within the ambit of Section 2(j) of the Act, on the ground that it is analogous to trade or business. It has to be examined every time upon the basis and the facts, which are brought on record as to whether one can definitely or exhaustively arrive at the conclusion that such undertaking fulfills the aforesaid attributes; as a working principle, it may be stated that an activity systematically or habitually undertaken for the production or distribution of the goods or for rendering of material services to the community at large or a part of such community with the help of employees, is an undertaking. Such activity would always involve the cooperation of the employer and employees; and its object is **satisfaction of material human needs**. It must not be casual nor must it be for oneself nor for pleasure.

It is not every time essential that profit motive is achievable, it is nevertheless necessary that the person carries on the activity and receives some consideration in return. Thus, it is very necessary to under stand,

examine and determine the true character of the activity in question. In the instant case the element of profit is definitely missing. There is no color of trade and business attributable nor there is any activity which can be held akin to manufacture or calling of employers and which may also include any calling, service, employment or the like. In the instant case the SGPC may be ostensible employer yet the moving force behind the activity is "the faith" which is inculcated in the society. The place of worship is not an institution where material human needs are met. It is primarily a spiritual institution. The *prasad,* which is termed and offered to the deity as *bhog,* does not serve the purpose of a hotel for catering food stuff. Any one who is taken in service for the upkeep of the aforesaid, would not fall within the ambit of employer and employee relationship in stricto senso. In this regard, we may refer to a Division Bench judgment of the Hon'ble Orissa High Court rendered in re: *Harihar Bahinpaty and others v. State of Orissa*, 1965 (10) Indian Factories and Labour Reports, 313. The relevant para reads as under:-

> "26. In the ultimate analysis therefore the position is this: The main objective of an institution is always to be kept in view. In deciding the *Delhi University* case cited above the Supreme Court took into consideration the bigger objective, namely education, in rejecting the argument that university is an industry. In the present case the spiritual side is the ultimate object of Shri Jagannath Temple. When the main objective is spiritual it cannot be an industry. The duties of the Committee are for the management of the Temple to keep the Temple in order and to see that there is no irregularity. The services of the

> petitioners were retained by the Temple administration for keeping order and discipline and for maintaining purity and also otherwise looking after the convenience of pilgrims who visit the temple for spiritual good. In no sense can it be said that maintenance of the Temple is primarily for meeting material human needs. The petitioners' duties therefore essentially appertain to the deity's affairs in the Temple. It is clear from the Record-of-Rights that the petitioners come under the category of Sevaks and employees for or connected with the Seva-Puja of the Temple. It is not that the petitioners constitute an independent separate unit detached from the Temple. It cannot be said that the petitioners are organised or arranged in a manner in which trade or business is generally organised or arranged. Nor can it be said that the primary object of the petitioners' duties is to render material service to the community. Thus, none of the features which are distinctive of activities to which Section 2(j) applies are present in the instant case."

In the religious places the work carried out is tempered with dedication and conviction drawn from the faith professed and that remuneration in respect thereof is of no consequence. No doubt for survival the devotee would also need something to live upon. But such payment and such governance may not reflect the color of an employee. If the objective seen and found is *mens sana in corpore sano*, (a sound mind in a sound body) in the institution, and the approach is not to accomplish fiscal human needs, such institution cannot be termed as an industry within the meaning

of Section 2(j) of the Act. There is no evidence which has been brought on record that the SGPC has indulged into any kind of commercial venture for the satisfaction of human wants. The work of SGPC is spiritual and religious, distribution of *karah prasad* and by opening up free langar would not bring the SGPC under the purview of the Act. The religious functions which are performed at times by the paid *sewadars* and at times by free service by the devotees, the SGPC cannot be termed as an industry. We are of the view that the Labour Court has correctly opined that SGPC is not an industry. Therefore, the dispute, if any was not referable under the provisions of the Act. Additionally, the factum of embezzlement having been proved beyond any doubt, no infirmity has been pointed out nor is discernible from the findings recorded by the Labour Court in this regard.

Resultantly, the petition is dismissed with no order as to costs.

(J.S.Narang)
Judge

14.9.2006. **(Arvind Kumar)**
rpj **Judge**